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Supreme Court of the United States

OCTOBER TERM, 1978

NO. 79-245

THE UNITED METHODIST CHURCH, ET AL.,

Petitioners

-vs.-

FRANK T. BARR, ET AL.,

Respondents

BRIEF *AMICUS CURIAE* BY THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

EARL W. TRENT, JR.
AMERICAN BAPTIST CHURCHES
IN THE U.S.A.
VALLEY FORGE, PA. 19481
(215) 768-2487
Attorney for Amicus Curiae

JOHN W. BAKER
200 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 544-4226
Of Counsel

INDEX

	Page
Interest of the amicus curiae	2
Questions presented	3
Constitutional and statutory provisions involved	4
Statement of the case	5
Reasons for granting the writ	6
1. The Organization of a Religious Denomination is the Product of Theological Understandings and Beliefs and Judicial Intrusion into These is Proscribed by the First Amendment	8
2. The Decision of the Court of Appeal, if Allowed to Stand, Would Unconstitutionally Mandate the Demise of Religious Denominations as They Now Exist	10
3. The Common-Purpose, Common-Name, Fairness Test Enunciated by the Court Below is Offensive to Amicus and to the Constitution . .	11
Conclusion	13

CITATIONS

Cases:

Barr v. United Methodist Church, 90 Cal.

Page

App.3d 259, 153 Cal.Rptr. 322 5,6
Cantwell v. Connecticut, 310 U.S. 296 . 4
Jones v. Wolf, ___ U.S. ___, 99 S.Ct. 3020 7,8
Metropolitan Baptist Church of Richmond, Inc. v Younger, 121 Cal. Rptr. 899, 48 C.A.3d 850 9
Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 . . 7
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 7
United States v. Ballard, 322 U.S. 78 . 8,9
Walz v. Tax Commission of the City of New York, 397 U.S. 664 10

United States Constitution:
First Amendment 3,4,11
Fourteenth Amendment 4

Statutes:
California Code of Civil Procedure, Section 388 4,5

Miscellaneous
Sir Edward Coke, Institutes of the Lawes of England, Part II (1st ed. 1642) 9,10

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Consent for the filing of this brief amicus curiae has been obtained in writing from all attorneys of record on both sides of this case. Their original letters of consent have been filed with the Clerk of the United States Supreme Court.

INTEREST OF THE AMICUS CURIAE

The Baptist Joint Committee on Public Affairs consists of representatives elected by each of eight cooperating Baptist conventions in the United States: the American Baptist Churches in the U.S.A., the Baptist General Conference, the National Baptist Convention of America, the National Baptist Convention, U.S.A., Inc., the North American Baptist Conference, the Progressive National Baptist Convention, Inc., the Seventh Day Baptist General Conference, and the Southern Baptist Convention. These Baptist groups have a combined membership of some 27 million and have, throughout their history, evidenced a vital concern for the protection of religious liberty and the maintenance of a separation of church and state. It is the opinion of the Baptist Joint Committee on Public Affairs that both the principle of religious liberty and the constitutional doctrine of the separation of church and state are jeopardized by the decision by the Court of Appeal, State of California in the case at bar. The case at bar also involves a connectional rather than a congregational denominational polity and it is the opinion of the amicus that

the experience and insight of congregationalists will assist this Court and should be taken into consideration in a decision on the issuance of a Writ of Certiorari. If the Petition for Writ of Certiorari is granted, it is the intention of amicus to file an expanded brief in support of Petitioners' brief on the merits.

QUESTIONS PRESENTED

The case at bar raises two questions of primary concern to amicus:

1. Did the Court of Appeal, State of California make a judicial determination of relationships within the denominational structure of the United Methodist Church (U.M.C.) which was contrary to the First Amendment to the Constitution of the United States because (a) those relationships have developed within the U.M.C. in response to theological determinations and beliefs, and (b) the judicial determination was contrary to the nature of intradenominational relationships as officially described in The Book of Discipline of the United Methodist Church (1976)?

2. Did the Court of Appeal, State of California err when it applied the neutral distinctions between hierarchical and con-

gregational churches, developed by this Court to deal with conflicting claims of ownership of church property, to a fact pattern which did not involve ownership of property?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The case at bar involves the interpretation of the following provisions:

1. The religion clauses of the First Amendment to the Constitution of the United States as made applicable to the states by the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296 (1940).

2. Section 388 of California's Code of Civil Procedure which provides:

> (a) Any partnership or other unincorporated association whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.
> (b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint

> and several, or several.

STATEMENT OF THE CASE

The statement of the case found in the Petitioners' brief (P.B.) pp. 4-17 is full. Investigation indicates that the statement is factually correct. There is no necessity to repeat the entire statement. However, there are some parts of it which, for the purpose of this brief, need to be emphasized.

1. The Court of Appeal, State of California in Barr v. United Methodist Church, 90 Cal.App.3d 259, 153 Cal.Rptr. 322 (1979), reversed the Minute Order decision of the Superior Court of California, County of San Diego (P.B., App. B). The Minute Order held that the U.M.C. is no more than a spiritual confederation and that it is not a jural entity or unincorporated association which could be sued under California's Code of Civil Procedure §388. "A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs" (P.B., A-22,23).

In its reversal of the Superior

Court's decision, the Court of Appeal, State of California made the determination that the U.M.C. is an hierarchical church (P.B., A-10). The court arrived at this conclusion despite evidence from historical documents and testimony of Methodist theologians to the contrary.

2. The Court of Appeal developed a common-purpose, common-name, fairness test which stated, "The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated" (P.B., A-8,9).

3. Throughout the entire history of the case there has been no plea for judicial immunity for those religious organizations which are admittedly jural entities.

REASONS FOR GRANTING THE WRIT

This Court has seen fit to make broad, rough discriminations between hierarchical and congregational churches in order to

settle disputes over the ownership of property within a single church or denomination [See, Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Jones v. Wolf, ____ U.S. ____, 99 S.Ct. 3020 (1979)]. While such generalizations about religious polity and ecclesiology may be useful to the judiciary as a rule of thumb in property disputes, they are inadequate, unjust, and unconstitutional when applied rigidly.

Denominational polity is diverse. There is a broad spectrum of religious organization which ranges from a rigid hierarchical polity on one extreme to totally independent individual congregational churches on the other. In between there are, inter alia, quasi-hierarchical, modified-hierarchical, connectional, and cooperating congregational churches. To force these and all of the other religious organizational permutations into two discrete, polar categories is to treat them unequally contrary to the strictures of the First Amendment. At the same time, the Constitution denies to the state the power to evaluate religious

doctrine or practices [See, Jones v. Wolf, supra, 99 S.Ct. at 3025].

The decision of the Court of Appeal, State of California has created a manifest injustice in the case at bar and should be reviewed by this Court for the following reasons:

I. THE ORGANIZATION OF A RELIGIOUS DENOMINATION IS THE PRODUCT OF THEOLOGICAL UNDERSTANDINGS AND BELIEFS AND JUDICIAL INTRUSION INTO THESE IS PROSCRIBED BY THE FIRST AMENDMENT.

The First Amendment does not raise an absolute bar against a court making decisions concerning denominational polity. In the face of offsetting testimony given by witnesses who are experts on a denomination's polity, in such cases as property or contract disputes, a court must decide on which of the expert testimony it will rely.

However, the Court of Appeal did not encounter conflicting expert testimony in the case at bar. Instead, its decision is based on its unilateral evaluation of religious doctrine and practice and manifests a rejection as untrue of the evaluation of the nature of Methodist ecclesiology given by those who are the experts on the doctrines and practices of that church. "When the

triers of fact undertake . . . [to determine the truth or falsity of belief], they enter a forbidden domain." United States v. Ballard, 322 U.S. 78 (1944) at 87. The Court of Appeal entered the forbidden domain.

California law also recognizes that such a forbidden domain exists. "'Ecclesiastical matters' ordinarily concern creeds and the proper mode of exercising one's belief, considerations of faith, including questions of what constitutes an essential of a church's faith, and matters of church discipline, tenets, and general polity; in such matters, the state, and its courts, have no legitimate concern or jurisdiction." Metropolitan Baptist Church of Richmond, Inc. v. Younger, 121 Cal.Rptr. 899, 48 C.A.3d 850 (1975) (emphasis added).

The common law requires that the state give deference to the polity determinations made by the churches. Sir Edward Coke, in his analysis of the "Articuli Cleri," stated, "And the opinion of Sir John Prisot, chief Justice of the common Pleas, is notable; To those laws which holy Church hath out of the Scripture, we ought to yield credit; for that (saith he) is the Common Law, upon which all laws are founded. . . ." II Coke,

Institutes of the Lawes of England 625 (1st ed. 1642).

Because ecclesiology is based on theological beliefs and understandings, the state is not a competent definer or interpreter of the nature and pattern of religious intraorganizational relationships. Unless this Court intervenes, the Court of Appeal's decision will be read as an invitation for in terrorem litigation against a new class of defendants and will lead to an unconstitutional entanglement of the state in the affairs of religion [See, Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970) at 670].

II. THE DECISION OF THE COURT OF APPEAL, IF ALLOWED TO STAND, WOULD UNCONSTITUTIONALLY MANDATE THE DEMISE OF RELIGIOUS DENOMINATIONS AS THEY NOW EXIST.

Judge Ross G. Tharp in his Minute Order (P.B., App. B) said, "If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent." The only alternative to empty pews and silent pulpits would be the restructuring of the polity of a denomination, regardless of its theology, into either an authoritarian

hierarchy where no actions could be taken by anyone without consent of the final authority within the denomination or into isolated fortresses of religion which have totally abandoned any cooperative efforts between individual churches. The former structure would doom the denomination to inaction and decay. Under the latter, some individual independent churches would survive but the social and missionary work possible with cooperative efforts would be curtailed or eliminated.

Whether the demise of organized religion would be desirable or undesirable is a value judgment and is not justiciable under the Constitution of the United States. However, if the First Amendment forbids the state to be directly antagonistic to religion or to dictate directly the beliefs of a church or directly to establish a religion or directly to abolish a religion, it also forbids the state to do any of these things indirectly. The state may not do indirectly that which it is forbidden by the Constitution to do directly.

III. THE COMMON-PURPOSE, COMMON-NAME, FAIRNESS TEST ENUNCIATED BY THE COURT BELOW IS OFFENSIVE TO AMICUS AND TO THE CONSTITUTION.

The Court of Appeal's test can only be read to make all religious organizations into unincorporated associations subject to suit for wrongdoings of a single entity within the organization regardless of the polity of that organization (P.B., A-8,9).

Baptists are among the most determinedly independent of the congregationalists. They are non-creedal, and the local church is the ultimate authority on its beliefs and on the qualifications for church membership. No outside individual or group can select or dismiss a minister. No outside individual or group can require a local church to believe or do anything. Yet these independent churches do form cooperative associations, conferences, and conventions to pool resources in order better to carry out national and international mission enterprises. Those Baptist churches which choose to cooperate often use the name of the group of churches with which they are cooperating to identify themselves. Thus, a local church may declare, "We are an American Baptist church," or "We are a Progressive Baptist church," or "We are a Southern Baptist church."

All Baptist churches share a common purpose -- the spreading of the good news of

Jesus as Savior to the entire world. As has been shown, Baptists sometimes identify with a common name. Some local churches may violate the legal rights of others. When they do, according to the decision of the Court of Appeal, the entire group of cooperating churches becomes liable for the wrongdoing of a church over which no other church or group has control.

The test enunciated by the Court of Appeal is offensive to amicus and is offensive to the Constitution when it is applied to religious organizations. The test is overly broad and therefore raises constitutional issues which should be examined by this Court.

CONCLUSION

For the reasons stated above, amicus prays that Petitioners' request for a Writ of Certiorari be granted, thereby affording an opportunity for full briefing and argument of the case.

Respectfully submitted,

Earl W. Trent, Jr.
American Baptist Churches
in the U.S.A.
Attorney for Amicus Curiae